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Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA**

MICHELLE ALBAHAE, et al,

Plaintiffs,

v.

**OLAPLEX HOLDINGS, INC. AND
 COSWAY CO., INC.,**

Defendants.

CASE NO. 2:23-cv-00982-RGK-PLA

Hon. R. Gary Klausner

**PLAINTIFFS' RESPONSE TO
 COURT'S SHOW CAUSE ORDER
 CONCERNING OLAPLEX
 HOLDINGS, INC.'S MOTION TO
 SEVER**

Hearing Date: N/A
 Hearing Time: N/A
 Hearing Ctrm: N/A
 Discovery Cut-Off: N/A
 Scheduling Conference: May 22, 2023
 Trial: N/A
 Action Filed: February 9, 2023

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3 Plaintiffs Michelle Albahae, Chelsea Arango, Megan Arcadi, Jessica Auriana,
4 Juliette Ball, Chelsea Balmer, Rebecca Barnhouse, Tiffany Berry, Donna Bowen,
5 Ashley Branning, Emma Broderick, Joanne Brown, Heather Burkett-Murphy, Holly
6 Burkhart, Hilary Cecile, Mackenzie Cogle, Ashley Courtney, Angelina da Gama,
7 Sarah Dahan, Hope Daley-Derry, Robin Daniels, Roxanna De la Cruz, Katherine
8 Donnelly, Brianda Earle, Monica Easily, Jacob Eisen, Michelle Estrada, Sandra
9 Ferguson, Amanda Fontenot, Denisha Freeman, Heather Garon, Jennifer Georgeson,
10 Alana Green, Nicole Hoff, Monica Hollifield individually and on behalf of S. H.,
11 Lauren Hudson, Tiffany Huval, Aleha Ingle, Heather Jackson, Khila James, Kat
12 Johnston, Jessica Jones individually and on behalf of P. J., Eunice Kahler, Tanya
13 Karakasheva, Kathleen Keehner, Liza Krengel, Anna Kurilova, Julia Leon, Kristie
14 Letizia, Tina Lewis, Laura Llewellyn, Stacey Lobdell, Lasmin Lozoya, Lyana
15 Luciano, Kim Marietta, Theresa McCormack, Leslie McDonald, Lisa Mendez, Jill
16 Mooshagian, Jennifer Morgan, Amanda Murphy, Jessica Nguyen, Leslie Orr,
17 Heather Passmore, Sylva Pate, Sara Petty, Danielle Phelps, Erica Pilicy-Ryan, Robin
18 Poston, Nicole Quenga, Melinda Quinn, Charity Reddish, Natalie Register, Jean
19 Riccio, Sarah Richardson, Heather Rife, Alexa Roemer, Felicia Sanchez, Amy Shay,
20 Farzana Siddiquei, Danielle Sigmon, Rhiannon Singer, Jodi Sobiech, Maria
21 Sokolova, Debra Sterlacci, Miecha Isys Thomas, Vanessa Tocco, Noel Talerico,
22 Marina Tolic, Leslie Tolstoy, Alexandra Urresti, Rebekah Valentine, Tanya Vallejo,
23 Jerrika Vega, Christina Ventor, Robin Vogt, Terri Witts, Robin Yeager and Maureen
24 Zavatone (collectively, "Plaintiffs") file this Response to the Court's Order to Show
25 Cause Concerning the Motion to Sever and Dismiss (the "Motion") filed by Olaplex
26 Holdings, Inc. ("Olaplex") and respectfully state as follows:
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1 On June 16, 2023, the Court issued a show cause order, requiring that
2 Plaintiffs explain why the Court should not sever Plaintiffs' claims. ECF 93.

3 The Court should not sever the claims because (1) governing Federal Rule of
4 Civil Procedure 20(a)(1) is to be construed liberally to prevent multiple lawsuits;
5 and (2) this Court has previously found the only practical, orderly, court and cost
6 efficient course in nearly identical circumstances¹ and, thus, to hold otherwise
7 creates confusion in the Central District for future litigants in multi-claimant suits
8 and creates the real risk that hotly disputed issues common to all Plaintiffs,
9 including general causation, will be decided inconsistently. Furthermore, because
10 Plaintiffs' claims require engagement of experts whose costs are very high relative
11 to the amount at issue for any individual Plaintiff, the Court's decision to sever
12 Plaintiffs' claims could be dispositive. For this reason, the Court should err on the
13 side of joinder when exercising its discretion.

14 Rule 20(a) is to be "construed liberally in order promote trial convenience and
15 to expedite final determination of disputes, *thereby preventing multiple lawsuits.*"
16 *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558 F.2d 914, 917 (9th
17 Cir. 1997) (emphasis added). "[J]oinder of claims, parties and remedies is strongly
18 encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1996).

19 For these reasons and others, in the *Collazo* opinion, this Court's brethren
20 jurist found a collective action was the only practical course, noting, in particular:
21 "If Plaintiffs' motion to (sic) leave were denied, Plaintiffs would be forced to file
22 hundreds of separate lawsuits" and "conduct hundreds of individualized discovery
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24
25 ¹ See *Collazo, et al., v. WEN By Chaz Dean, Inc., et al.*, 2017 WL 11747630 (C.D.
26 Cal. Apr. 26, 2017) (Wright, J.) (hereinafter the "*Collazo* opinion").
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1 requests” which the Court found “extremely inefficient despite the numerous
2 commonalities among the Plaintiffs.” 2017 WL 11747630, *5. The Court
3 concluded, “it is more efficient . . . for the cases to proceed together, particularly for
4 purposes of pretrial discovery” and “[joinder of plaintiffs]—who share core
5 similarities with each other and with the [existing plaintiffs]—makes resolution of
6 the case more efficient, not more confusing.” *Id.*

7 In its Order, the Court dismisses the *Collazo* opinion on the mistaken belief it
8 “never addressed the same transaction or occurrence requirement” because the issue
9 was not disputed by the parties. ECF 93, p. 3. But the defendants in that case did
10 dispute the commonality of factual allegations and, in fact, made the same
11 arguments as does Olaplex: the plaintiffs used different products for different time
12 periods and suffered different injuries of different severity.² Nevertheless, the
13 *Collazo* opinion rejects these arguments and expressly concludes, “this [same
14 transaction or occurrence] requirement is satisfied” because “the proposed
15 Plaintiffs’ allegations concern the same Wen hair products made with the same
16 ingredients, the advertising for those products, and the same types of injuries”
17 *Id.* at *2.

18 Plaintiffs’ claims are similar as between them and as compared to the WEN
19 claimants, in particular allegations: (1) plaintiffs used multiple products in the
20 defendant’s product line at defendant’s instruction, *cf.* FAC ¶¶ 248, 268 and
21 *Collazo*, ECF 131, ¶¶ 1, 6, 727;³ (2) plaintiffs, in general, suffered the same three
22 types of injuries: scalp/skin irritation; hair loss and hair damages (from which all
23

24
25 ² Case 2:15-cv-01974-ODW-AGR, ECF 66, p. 4-7, attached as Exhibit A.

26 ³ Case 2:15-cv-01974-ODW-AGR, ECF 131 is attached as Exhibit B
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1 Plaintiffs suffered mental anguish), *cf.* FAC ¶ 143 and *Collazo*, ECF 131, ¶ 8; and
2 (3) plaintiffs were victimized by the same ubiquitous, multimedia, international
3 marketing campaign. *Cf.* FAC ¶¶ 129-137 and *Collazo*, ECF 131, ¶¶ 6, 641, p. 56.

4 The similarities between Plaintiffs' claims and the allegations in *Collazo*
5 require a consistent ruling. To hold otherwise creates uncertainty for future Central
6 District litigants and erodes the fundamental principles underlying the Rule of Law
7 and *stare decisis*.

8 The cases on which Olaplex (and the Court's Order) relies are factually
9 distinct. Focusing on *Dunbar* and *Wanke* for brevity's sake, both of these cases
10 involve medical devices implanted or administered by a physician for a medical
11 condition. This necessarily requires an individualized analysis of the medical
12 treatment, underlying medical condition and, because of the learned intermediary
13 doctrine, what the doctor heard and understood in terms of warnings and risks.
14 These same observations apply to the drug cases cited by Olaplex. Plaintiffs, on the
15 other hand, specifically deny having had a related underlying medical condition, and
16 many did not seek medical treatment for their injuries. The inquiry here is instead on
17 the Olaplex products and advertisement—issues common to all Plaintiffs.

18 In addition to the inefficiencies and impracticalities noted in the *Collazo*
19 opinion, severing the claims creates the real risk that the many fervently disputed
20 issues common to all Plaintiffs—such as general causation and actionability of
21 certain misrepresentations to name only two—will be decided inconsistently. This
22 outcome should be equally feared by Plaintiffs and Olaplex. But worse, as occurs if
23 this Court declines to follow the *Collazo* opinion, it erodes the judicial system as a
24 whole.

25 Finally, requiring hundreds of separate lawsuits may be dispositive. Plaintiffs'
26 claims require engagement of causation experts at great expense. This expense can
27 be shared among Plaintiffs if they are allowed to proceed collectively. But separate
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1 suits may require separate expert discovery (disclosures, reports and depositions,
2 among other things) even if related to common issues, like general causation, which
3 will result in extremely high costs, per case, relative to the amount at issue for any
4 individual Plaintiff. Since these expenses may not be fully recoverable, even if a
5 Plaintiff prevails in her claim, public policy also supports joinder of these cases.
6 Indeed, some Plaintiffs may be unable to pursue a claim if expert fees consume any
7 potential judgment amount, despite the merits of the claim. As noted in the Order,
8 the Court has great discretion in ruling on the Motion to sever. For this reason—and
9 to fulfill the purpose of Rule 20(a), in general, the Court should err on the side of
10 joinder when exercising its discretion.

11 This is particularly true where, as here, Plaintiffs propose their claims be tried
12 using the Bellwhether method, followed, if necessary, by additional mini-trials. This
13 eliminates any prejudice to Olaplex. It also means that, while Plaintiffs may be
14 unable to pursue their claims at all or, at the very least, will suffer much greater
15 expense and inefficiency, Olaplex gains nothing by severing Plaintiffs' claims: it
16 will be preparing and presenting the same defenses—propounding the same
17 discovery, deposing and, at trial, cross examining the same witnesses—whether or
18 not the claims proceed jointly.

19 Plaintiffs met and conferred with Olaplex as to the question posed by the
20 Court to Olaplex: which claims should survive in this lawsuit should the Court grant
21 the Motion. Olaplex did not yet have a position on the matter. Thus, while Plaintiffs
22 acknowledge the apparent inconsistency in Olaplex's argument that the claims are
23 highly individualized but that the Court should sever all but the California Plaintiffs'
24 claims, they are unable to join or rebut any proposal by Olaplex in that regard.

1 Respectfully submitted,

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25 *Attorneys for Plaintiffs*

26 **CERTIFICATE OF SERVICE**

27 I certify that on the 26th day of June, 2023, I served the foregoing document
28 on all counsel of record via ECF.

By: /s/ Amy E. Davis